

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

PHYLLIS G. BARNES and  
WALTER R. BARNES,  
Plaintiffs,

VS.

GREG MALINAK, DEBBIE  
MALINAK, and SIDNEY JAMES  
MOTOR LODGE, INC., d/b/a  
OLDE GATLINBURG RENTALS,  
Defendants.

vs  
vs  
vs  
vs  
vs  
vs  
vs

NO. 3:15-cv-00556-PLR-HBG

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ORAL AND VIDEOTAPED DEPOSITION OF  
RUSSELL J. KENDZIOR  
MAY 22, 2017  
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ORAL AND VIDEOTAPED DEPOSITION OF RUSSELL J. KENDZIOR, produced as a witness at the instance of the Defendants, and duly sworn, was taken in the above-styled and -numbered cause on May 22, 2017, from 10:21 a.m. to 2:20 p.m., before Angela L. Mancuso, CSR No. 4514 in and for the State of Texas, reported by Stenographic method, at the offices of Stryker Reporting, 1452 Hughes Road, Suite 200, Grapevine, Texas, pursuant to the Federal Rules of Civil Procedure, Notice, and any provisions stated on the record.

**STRYKER REPORTING SERVICES**

(8)

**EXHIBIT**  
**B**

1 Q. And where --

2 A. Here in Southlake.

3 Q. That's in Southlake?

4 A. Yes.

5 Q. Okay. We'll talk about that a little later.

6 Tell me about your education after high  
7 school.

8 A. I have a Bachelor of Science degree in  
9 mathematics from Bradley University, and that was in  
10 1985 that I graduated.

11 Q. Okay. How long did it take you to complete  
12 your degree?

13 A. Well, I worked and went to school and had to  
14 take off, so it took about seven years.

15 Q. Okay. Other than your degree in mathematics,  
16 do you have any other degrees of any kind?

17 A. No.

18 Q. No postgraduate degrees?

19 A. No.

20 Q. You're not a licensed engineer?

21 A. I am not.

22 Q. And you're not a licensed architect?

23 A. No.

24 Q. Okay. Do you have any specialty-type training  
25 or certifications in the field of slip-and-falls?

1           A.    Yes.

2           Q.    Tell me about those.

3           A.    Actually, it's a broader area.  It's walkway  
4 safety that --

5           Q.    Okay.

6           A.    -- involves slips, trips, many different types  
7 of stumbles, different falls.  I'm a Walkway Auditor  
8 Certificate Holder, or WACH, W-A-C-H, as better known,  
9 which is an ANSI accreditation.  It's a professional  
10 designation issued through the National Floor Safety  
11 Institute, which is the ANSI -- and that's A-N-S-I --  
12 accredited training organization in the area of slip,  
13 trip, and fall prevention.

14           I also have a training in -- from OSHA.  I  
15 have both the 10- and 30-hour-level training from OSHA  
16 in their general industry requirements for their Code of  
17 Federal Regulations, Section 29, for occupational safety  
18 and health.

19           I also have a license from the State of Texas  
20 to perform walkway inspections, or inspections in  
21 general, not just walkways, for the Texas Accessibility  
22 Standard, or TAS.  I'm licensed as a registered  
23 accessibility specialist with the State, through the  
24 State's Department of Licensing and Regulations.  So I  
25 do a lot of work with the -- what is commonly known as

1 the ADA.

2 Received a lot of other forms of training  
3 through my 20-plus years of experience, through  
4 organizations like the National Safety Council, which I  
5 served on their board of delegates for four or five  
6 years; the American Society of Safety Engineers; the  
7 American Society of Testing and Materials, or ASTM. So  
8 I've probably exhausted all the forms of training that  
9 are available in my area of expertise.

10 Q. Any of those that you mentioned, any of those  
11 relevant to bath mats?

12 A. Well, yes. All areas of walkway safety,  
13 whether it be mats or floors or rugs, which are all --  
14 which are all, by the way, all different. So --

15 Q. Do you have any specific training in just bath  
16 mats?

17 A. Well, I -- what do you mean, bath mats? This  
18 is -- we're talking about a bath towel here.

19 Q. Okay. We've been referring to it as -- as a  
20 cotton terry bath mat.

21 A. Yeah. It's actually a towel. It's called a  
22 mat.

23 And, no, I don't have any training in terry  
24 cloth bath towels. I do have experience in that area as  
25 it relates to a pending standard that's being developed

1 right now by the ASTM for bath mat performance. There  
2 is actually a standard being developed for bath mats  
3 right now, and I'm part of the committee on the ASTM  
4 that's developing that standard.

5 Q. I take it by you saying the standard -- the  
6 ASTM standard is being developed, it's not out there yet  
7 as a standard yet. Is that correct?

8 A. That's correct. It's not published yet.

9 Q. The walkway auditor via ANSI, was that a  
10 course that you took?

11 A. Yes.

12 Q. How many hour course was that?

13 A. It's four days, and so it takes a total of --  
14 well, it's actually three days of training and a fourth  
15 day as an examination day.

16 Q. Okay.

17 A. So it's 24 hours.

18 Q. Twenty-four-hour course. You had to take an  
19 examination?

20 A. A written exam and a audit. You have to  
21 perform a walkway audit.

22 Q. Okay. And did you pass that exam?

23 A. I did.

24 Q. Was there anything specific to cotton --  
25 cotton terry bath mats in -- in that course?

10

1 A. No.

2 Q. The OSHA 10- and 30-hour training regarding  
3 CFR 29 -- I guess that is what it says -- you took a  
4 10-hour course and a 30-hour course?

5 A. Yes.

6 Q. Okay. And you're not saying that anything in  
7 this case has anything to do with OSHA, are you?

8 A. No.

9 Q. Okay. Anything in your OSHA training that was  
10 specific to bath mats?

11 A. No.

12 Q. You mentioned you had a license in Texas to  
13 perform walkway inspections regarding the ADA.

14 Do you have any licenses from the State of  
15 Tennessee in anything whatsoever?

16 A. No.

17 Q. Okay. And you're not contending that the ADA  
18 is applicable in this case, are you?

19 A. No. My understanding is the plaintiff,  
20 Ms. Barnes, is not or was not classified as being  
21 disabled and therefore not protected by the class of  
22 dis -- disability.

23 Q. I believe you mentioned the National Safety  
24 Council. Was that a course?

25 A. A series of courses.

1 Q. How many hours?

2 A. Gosh, it goes back quite a few years.

3 Probably four to eight hours total.

4 Q. Okay. And anything in the National Safety  
5 Council course that had to do specifically with cotton  
6 terry bath mats?

7 A. No.

8 Q. And the next one, if my shorthand is correct,  
9 did you say American Society of Safety Engineers?

10 A. Yes.

11 Q. Okay. And was that a course?

12 A. Seminars. All these were seminars or Webinars  
13 or special training classes or programs.

14 Q. Okay. And you don't have to be an engineer to  
15 be a member of the American Society of Safety Engineers?

16 A. I don't know. I don't know if you do or not.  
17 I think there is some requirement for expertise or  
18 experience in engineering.

19 Q. But you're not an engineer?

20 A. I'm not.

21 Q. Okay. Anything in any training you've taken  
22 with the American Society of Engineers specific to  
23 cotton terry bath mats?

24 A. No.

25 Q. And the last one I didn't get. You mentioned

1 cleaning product that was a treatment called TP-421.  
2 From there, the line grew.

3 Q. Do you have any knowledge about what the floor  
4 in this case we're here about today had been cleaned  
5 with prior to the plaintiffs being in the bathroom?

6 A. No.

7 Q. Does anyone employed by Traction Plus have a  
8 degree in engineering or architecture?

9 A. No.

10 Q. Anybody employed by Traction Plus have any  
11 advanced degree of any kind?

12 A. No.

13 Q. 1997 to present, you say "Founder & Chairman  
14 of the Board of the National Floor Safety Institute."

15 So this is something that you founded; is that  
16 correct?

17 A. Yes.

18 Q. And this is a 501(c) (3) nonprofit?

19 A. Yes.

20 Q. Tell me what the National Floor Safety  
21 Institute does.

22 A. The NFSI, as we're better known, has a fairly  
23 simple mission of aiding in the prevention of slips,  
24 trips, and falls through education, research, and  
25 standards development.

21

1 we actually authored a floor mat standard. There is an  
2 ANSI standard for entranceway floor mats, and we do  
3 training on matting, and we -- but not a towel, which in  
4 this case is being used as a mat.

5 We do training on grab bars as well. It's  
6 part of the walkway auditor training.

7 Q. Okay. You said NFSI certifies products with  
8 ANSI, including bath mats.

9 What bath mats do you certify?

10 A. Well, what, by definition, constitutes a  
11 mat -- maybe it'll help to start with that -- is that it  
12 has to have a -- mats have a surface that you step on  
13 that's absorbent, like cotton, but it also has a  
14 specific and different backing. The backing of the mat  
15 is different than the face of the mat.

16 And so the backing that we test for  
17 manufacturers for slip resistance are the type that have  
18 like a rubber type of backing or -- there's different  
19 synthetic material. So if you go into, for example,  
20 a -- I don't know -- JCPenney's and you buy a bath mat,  
21 20-by-30-inch bath mat, you'll notice that they're all  
22 NFSI certified. It has the logo on the back. But we  
23 certify all types of mats, not just bath mats. But we  
24 certify entranceway mats, anti-fatigue mats, the various  
25 types of floor matting products that are widely used

33

1 to term it, like the one that was used in this case,  
2 have you?

3 A. No. I've never designed a towel.

4 Q. Okay. Do you give active lectures, talks now  
5 in the field of bathroom safety with regard to bath  
6 mats, grab bars? Is that something you do on a regular  
7 basis?

8 A. I've done those types of programs. I wouldn't  
9 say on a regular basis. I think we've discussed some of  
10 the training I've done over the years in that area.

11 Q. Your publications that we've talked about,  
12 have those been peer-reviewed? And I guess I should ask  
13 you if you know what peer-reviewed means.

14 A. Yes and no. Yes, I know what it means. And,  
15 no, they have not been peer-reviewed.

16 Q. Okay. Have any of your publications been  
17 peer-reviewed?

18 A. I don't write to that industry, so, no.

19 Q. Okay. And when you say "that industry," what  
20 are you referring to?

21 A. The technical industry, the scientific  
22 industry, which is where peer review is important. I've  
23 been a peer reviewer, but I don't author peer-reviewed  
24 stories, research.

25 Q. Other than the ones we have talked about, your

1 any of your opinions in this case?

2 A. No.

3 Q. Have you ever talked to the plaintiffs, either  
4 Phyllis G. Barnes or Walter R. Barnes, about any of the  
5 issues in this case?

6 A. No.

7 Q. Did anybody tell you that the plaintiffs  
8 weren't available to talk or couldn't remember the  
9 events or anything like that?

10 A. No.

11 Q. Have you corresponded with the plaintiffs  
12 about any issues in this case?

13 A. No.

14 Q. And you haven't talked with or corresponded  
15 with any of the named defendants in this case, have you?

16 A. No.

17 Q. In looking at your file and materials you  
18 reviewed, I didn't see in there where you had reviewed  
19 any of the defendants' answers. Is that correct?

20 A. Unless they were on the disk, I didn't receive  
21 them. I obviously didn't review them.

22 Q. Okay. We'll look at the disk at a break.

23 Did you have any conversations with  
24 plaintiffs' counsel about the facts of the case?

25 A. Probably when I was initially retained, by way

1 of a telephone call they described the case, the  
2 situation, the basic facts. I say that because that's  
3 traditionally what happens. Before I accept being --  
4 taking on a case, they kind of give me the facts.

5 Q. And you don't make any notes when you have  
6 those telephone calls?

7 A. No.

8 Q. Okay.

9 A. Because a lot of times I turn down the case or  
10 I never hear from the attorney again. So --

11 Q. So your opinions and conclusions in this case  
12 were derived from the facts and data that are contained  
13 in your file that we reviewed and on the thumb drive  
14 that we're going to review and the things you cite in  
15 your reports; is that correct?

16 A. Yes.

17 Q. Okay.

18 A. In fact, my opinions are based on what I cite  
19 in my report.

20 Q. And you haven't been to this condominium where  
21 the plaintiff fell in Gatlinburg, Tennessee, have you?

22 A. No.

23 Q. Did you send anyone to this condo on your  
24 behalf to do any testing or examine the scene for you?

25 A. No.

52

1 that are expressed that I assume are yours.

2 A. Yes.

3 Q. Okay. If you will turn to page 2 on  
4 Exhibit 1, the second paragraph, the first block  
5 paragraph, it starts with, "Sidney James Motor Lodge  
6 d/b/a Olde Gatlinburg Condominium Rentals and the owners  
7 Greg and Deb Malinak breached the standard of care they  
8 owed to the Plaintiffs to provide them a bath mat that  
9 would not slip when used for exiting the bathtub."

10 What, if any, codes, laws, standards,  
11 ordinances do you point to to support that contention?

12 A. That the mat was slippery?

13 Q. For your statement that I just read that  
14 owed -- "breached the standard of care that they owed to  
15 the Plaintiffs to provide them a bath mat that would not  
16 slip when used for exiting the bathtub."

17 A. Yeah. There's actually several standards, and  
18 they're actually in my second report, I guess, what I  
19 call my report. One's an ASTM standard, and the other  
20 one is the ANSI B101.6 standard that calls for matting  
21 to have a slip-resistant backing.

22 Q. Both the ASTM and ANSI standards are voluntary  
23 standards, aren't they?

24 A. Yes.

25 Q. And what does -- what does that mean to you

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1 when I say "voluntary standard"?

2 A. They're not mandated by law.

3 Q. They're not mandated by any law in Sevier  
4 County, Tennessee; Gatlinburg, Tennessee; or the State  
5 of Tennessee, are they?

6 A. No.

7 Q. Next there in that same paragraph, about four  
8 lines down, you say specific -- I'm quoting --  
9 "Specifically, these Defendants failed to provide a  
10 suitable bath mat for the type of flooring that was in  
11 the condominium rented by the Plaintiffs on the day in  
12 question. Bath towels are not bath mats and should not  
13 be used as such."

14 A. Uh-huh.

15 Q. Are you again relying on ASTM and ANSI for  
16 those statements?

17 A. Well, not only ASTM and ANSI, but this subject  
18 bath mat was not a mat. It was a towel. And it's not  
19 intended to be used as a mat. It's an absorbent towel.

20 Q. What is your basis for saying that it's not  
21 intended to be used as a mat?

22 A. It's not marketed or sold as a mat. I mean,  
23 the companies who produce bath towels do not label them  
24 as bath mats.

25 Q. Have you stayed in hotels, motels, or other

1       A.     It appeared to be some type of a vinyl tile  
2 surface.  It was a tile of some type.  I think  
3 Mrs. Barnes referred -- referred to it as linoleum.

4       Q.     Okay.

5       A.     But it appeared to be a synthetic tile.

6       Q.     When you say "synthetic tile," what does that  
7 mean?

8       A.     Meaning some type of vinyl or linoleum-type  
9 material --

10      Q.     Okay.

11      A.     -- versus that of a ceramic tile.

12      Q.     Okay.

13      A.     But again, that's based on Ms. -- the  
14 Barneses' testimony as well as the photographs.  I  
15 didn't actually see the tile firsthand.

16      Q.     Okay.  Some kind of synthetic tile like vinyl  
17 or linoleum?

18      A.     Yeah, or it could have been ceramic.  I just  
19 don't know.

20      Q.     Okay.  You've never tested the actual floor?

21      A.     No.

22      Q.     Are you aware of any prohibition against vinyl  
23 floors in overnight rental accommodations in Sevier  
24 County, Tennessee?

25      A.     Wow, that's a -- prohibition by who?

1       Q.     Laws, ordinances --

2       A.     No.

3       Q.     -- regulations, anything you can point to that  
4     says you can't have vinyl floors in a bathroom in an  
5     overnight rental in --

6       A.     No.

7       Q.     -- Sevier County, Tennessee?

8       A.     No, not that I know of. I don't know of  
9     prohibition of floors anywhere, for that matter.

10      Q.     Your next sentence there, it says, bath --  
11     quote, "Bath towels are not bath mats and should not be  
12     used as such."

13            Is that based on ASTM? ANSI? What's that  
14     based on?

15      A.     Well, you don't use towels as mats because a  
16     towel is not a mat, regardless of the fact that, at  
17     least in this case, they're referred to as mats.  
18     They're not.

19           It's like saying let's put paper towels -- or  
20     better yet let's take a piece of cardboard. Put that on  
21     the ground and call it a mat. People do that. Go into  
22     industrial applications where they put card -- they put  
23     cardboard down. Well, cardboard is not a mat any more  
24     than a towel is a mat. So it's really by the definition  
25     of the term "mat."

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1 A. Probably all the above, yeah. Both. And lack  
2 of grab bars.

3 Q. I'm going to show you a copy of the American  
4 National Standard, I believe, that you cited in the next  
5 section of your first report as facts or data you  
6 considered in forming your opinions.

7 Does that look like the ANSI standards?

8 A. Yes.

9           Q.     Okay.   If we could make that the next exhibit,  
10           please.

11 (Deposition Exhibit 6 marked)

12 Q. And do I have the right section? I think I  
13 do. 1264.2, 2012, is what you said you relied on and  
14 that's what --

15 A. Yes.

16 Q. And what number is that?

17 A. 6.

18 Q. 6. If you'd look on -- it's not numbered, but  
19 it's the fourth page. Looks like this.

20 A. Oh, okay. Yes.

21 Q. Sort of introductory remarks. If you'd look  
22 about midway down through there -- and I'm quoting -- it  
23 says, "The use of American National Standards is  
24 completely voluntary." Is that -- did I read that  
25 correctly?

1 than it is wider.

2 Q. So like when you walk into Walmart after it's  
3 been raining --

4 A. Yes.

5 Q. -- is that a runner?

6 A. That's a runner.

7 Q. Okay.

8 A. I don't know if it matters, but you brought it  
9 up earlier about warnings.

10 Q. Yes.

11 A. That's also a section.

12 Q. Which section is that?

13 A. Section 9.

14 Q. Is there a specific subsection in 9 that  
15 applies? Or you say all of 9 applies?

16 A. Most of 9, not all, but many of the sections  
17 in 9 apply.

18 Q. Next, you cite the National Floor Safety  
19 Institute 101-C. Is that a correct copy of what you  
20 cited?

21 A. Yes.

22 Q. Could we make that the next numbered exhibit,  
23 please.

24 (Deposition Exhibit 7 marked)

25 Q. And this is the one you created, founded, the

1 National Floor Safety Institute; is that correct?

2 A. Yes. This is their standard.

3 Q. Did you write this standard?

4 A. I was one of the co-authors, yes.

5 Q. And this is dealing with testing the  
6 coefficient of friction; is that right?

7 A. The transitional coefficient of friction, yes.

8 Q. Transitional?

9 A. Yes.

10 Q. In Section 1.3 of Exhibit 7, the last  
11 sentence, you say, quote, "No express or implied  
12 representation or warranty is made regarding accuracy or  
13 significance of any test results in terms of slip  
14 resistance." Period. End quote. Is that right?

15 A. Yes.

16 Q. What do you mean by that?

17 A. Well, it's up to the user, the manufacturer,  
18 to decide for themselves what they would consider  
19 appropriate for their -- their application of a mat.

20 Q. Do -- somebody who downloads this, do they  
21 have to pay for a copy of this document?

22 A. I don't know. That's a good question. I  
23 don't know. They might. I know -- I know the ANSI  
24 standards, there is a cost. But there is a period of  
25 time where I don't think we charged for downloads of

1 this standard. That may have changed.

2 Q. In Section 1.4 of Exhibit 7, the NFSI  
3 standards, you state, quote, "This test meth" -- excuse  
4 me -- "This test method is not recommended for wet  
5 surface testing and does not propose to be an accurate  
6 measurement method for determining wet surface slip  
7 resistance." Period. End quote.

8 Do you know whether the bathroom floor was wet  
9 or dry when Ms. Barnes stepped out, in the area where  
10 she stepped out of the tub?

11 A. I don't know. When you say "wet," meaning  
12 water on the floor or --

13 Q. Yeah.

14 A. I think she talked about humidity. There was  
15 an exhaust fan or something that would take -- when you  
16 shower, it kind of gets foggy. So that level of  
17 humidity was present. But it's my understanding that  
18 the floor was not wet.

19 Q. And this standard, the National Floor Safety  
20 Institute standard that we're looking at, it is also a  
21 voluntary standard; is that right?

22 A. Yes.

23 Q. It is not legally applicable to rental condos  
24 in Sevier County, Tennessee, is it?

25 A. Well, again, it's not -- it's not a law.

1 There is no mandated use of the standard --

2 Q. No --

3 A. -- by law.

4 Q. No code, no Sevier County code, ordinance,  
5 Tennessee law, anything like that has adopted the  
6 standard, have they?

7 A. Not that I know of, no.

8 Q. Take a look at Section 5, if you would, before  
9 we leave Exhibit 7.

10 A. Okay.

11 Q. Calculation/Data Interpretation. You say,  
12 quote, in the second -- third sentence -- I'm sorry --  
13 last sentence in that first part, "Dry" is that  
14 "transitional coefficient of friction values of 0.50 or  
15 greater are those that demonstrate High Traction  
16 characteristics as defined in this standard." End  
17 quote.

18 What's the basis for that statement?

19 A. What do you mean, the basis?

20 Q. This standard that you've professed here of  
21 0.50 or greater demonstrates high traction, how -- how  
22 did you arrive -- what's the basis for that standard?  
23 How did you arrive at 0.50?

24 A. Okay. Good question. The standard is based  
25 on a normal person's ambulation. If you were to watch

1           A.    Yes.

2           Q.    And the ASTM standards are also voluntary and  
3 non-mandatory, aren't they?

4           A.    Yes.

5           Q.    Okay.

6           A.    But it also talks about enhancing safety.

7           Q.    Okay. Are you aware of any Tennessee or  
8 Sevier County code, law, ordinance, anything like that  
9 that adopts the ASTM standards?

10          A.    Oh, I'm sure there are. I don't know of  
11 every -- I don't know every standard that the county  
12 recognizes. That's kind of -- puts me in an unfair  
13 position to answer that question. I'm not an expert on  
14 what the county -- every county standard or code that's  
15 referenced would be.

16          Q.    Have you looked at any Tennessee laws as part  
17 of your work in this case?

18          A.    No.

19          Q.    Have you looked at any Sevier County building  
20 codes?

21          A.    No. This has nothing to do with building  
22 codes.

23          Q.    Have you looked at any Sevier County  
24 ordinances?

25          A.    No.

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1       Q.     So I'm looking at Exhibit 9, which is  
2 F1637-10. I'll narrow my question.

3                 Are you aware of any Tennessee law or Sevier  
4 County ordinance, code, anything at all that references  
5 or adopts ASTM F1637-10 to make it applicable in Sevier  
6 County, Tennessee?

7       A.     No.

8       Q.     Okay. And which portions of -- or is it all  
9 of Exhibit 9, F1637-10, that you say is applicable to  
10 this case?

11      A.     No. Section 1, Scope, of course defines,  
12 second sentence, first paragraph. "This practice is  
13 intended to provide reasonably safe walking surfaces for  
14 pedestrians wearing ordinary footwear. These guidelines  
15 may not be adequate for those with certain mobility  
16 impairments." And so this is really designing or  
17 defining what is the standard of care for a safe walking  
18 surface, number one.

19                 And then the only other section that applies  
20 is Section 5.4, which is Mats and Runners, and it kind  
21 of defines the importance of using a mat and a runner --  
22 or a runner.

23                 This particular towel does not constitute, by  
24 definition, a mat or a runner. And so this ASTM F1637  
25 standard kind of sets forth the provision for proper use

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1 of such mats and runners, where, in this case, there was  
2 no mat or runner used.

3 Q. That sentence you just read, under Scope,  
4 says, "This practice is intended to provide reasonably  
5 safe walking surfaces for pedestrians wearing ordinary  
6 footwear."

7 A. Right.

8 Q. Ms. Barnes wasn't wearing ordinary footwear,  
9 was she?

10 A. No.

11 Q. So then how is F1637-10 applicable at all?

12 A. Well, this is a towel that's used in the  
13 bathroom where people may come into the bathroom after  
14 they're showered and step on it with a shoe or footwear.  
15 It's not specific. In other words, the bath towel that  
16 you mentioned are widely used in hotels, I would expect  
17 that people do walk into the bathroom and step on them  
18 both without shoes and with shoes. So the product  
19 itself, the towel, has to sustain a level of safety with  
20 shoes and, in the case of Ms. Barnes, without shoes.

21 Q. Look at Section 4, if you would, please,  
22 Significance and Use.

23 A. Uh-huh.

24 Q. Last sentence says, "Swimming pools, bath  
25 tubs, showers, natural walks, and unimproved paths are

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1 26-inch-by-21-inch terry cloth bath towel. So that's  
2 how it's referenced. The 3-inch-by-3-inch section that  
3 was cut out of it was actually cut out per the NFSI test  
4 method. That's the size of the sample that's required  
5 to -- to test. Measurements were taken in four  
6 directions and averaged as it relates to the bath towel.  
7 And a transitional coefficient of friction value was  
8 generated.

9 Q. What was that transitional coefficient of  
10 friction figure?

11 A. It's on page 3 of my report, second paragraph.  
12 The value was 0.14.

13 Q. Did you use a tribometer?

14 A. Yes.

15 Q. Tell -- tell me about that process. I've  
16 never used a tribometer. I know what they do. I've  
17 never -- never used one. Only seen pictures. Tell  
18 me -- walk me through that process of how you tested  
19 this, what you call bath towel.

20 A. The tribometer that's specified within the  
21 NFSI 101-C standard is a device called the Brungraber --  
22 that's B-r-u-n-g-r-a-b-e-r -- Mark II test device. And  
23 it's a articulated strut device where you can change the  
24 angle of the strut so as it's coming down on the floor,  
25 you get a change of angle.

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1           It has a 5-pound weight that comes down at the  
2 designated angle. It transfers the weight through a  
3 3-inch-by-3-inch metal plate which is mounted onto the  
4 strut. And so this particular bath mat is attached to  
5 the plate, so it's going to strike the ground with the  
6 mat attached, if you will, to the articulated strut.

7           Beneath the device is a standardized tile.  
8 It's called -- it's a calibration tile that has a known  
9 coefficient of friction of 0.5, which is kind of an  
10 average tile. It's not high traction. It's not low  
11 traction. It's kind of an average coefficient of  
12 friction tile.

13           And so once the tile -- I'm sorry -- the mat  
14 strikes the tile at whatever designated angle, kind of  
15 simulates somebody stepping on the mat at that angle.  
16 And it -- and when it contacts the tile, the mat -- in  
17 this case, the towel will actually slide or it will  
18 stick, meaning it won't move. It won't slip on the  
19 floor.

20           And so any value above a 0.5 would constitute  
21 a high-traction material, meaning if you were to walk  
22 across it at that angle, it wouldn't slip. In this  
23 case, it was very low, 0.14, which means this particular  
24 towel will move at a very, you know, steep angle. Just  
25 walking across it, it's going to move without stepping

1 on it at a -- at a extended gait.

2 Q. How did you arrive at the angle that you used  
3 for the testing?

4 A. On the device, you continue to rotate it. You  
5 continue to rotate the angle until it doesn't slip. And  
6 so a value of point -- of -- of less than 0.14, it was  
7 not sliding, or slipping, I should say. So at a value  
8 of 0.10, it wouldn't slide. At a value of 1.11, it  
9 doesn't slide. But then when we got up to value of  
10 0.14, that's what triggers to slip. And that's the  
11 number that's recorded. And it's an average of four --  
12 this sample is rotated in four directions. So it's  
13 tested in that direction, this direction, this direction  
14 to get an average direction.

15 Q. Do you know what angle Ms. Barnes stepped out  
16 of the tub onto the towel?

17 A. No. I don't know. I wasn't there. I don't  
18 know.

19 Q. And you said you used a test tile to test the  
20 transitional coefficient of friction; is that correct?

21 A. Yes.

22 Q. The floors in this condo are not tile, though,  
23 are they? They're vinyl or linoleum.

24 A. Yes. And again, we're just using a  
25 representative average type of floor material. In this

1 case, as I said, I don't know what the coefficient of  
2 friction of the tile was in this particular bathroom,  
3 but it would be comparable to an average surface, I  
4 assume.

5 Q. Did you do this testing you've described, or  
6 did you have someone else do it?

7 A. No. I did it.

8 Q. Under the Background section on Exhibit 10,  
9 about midway down there, you say, quote, "The bath towel  
10 was provided by the Defendant as a bathmat." And you go  
11 on.

12 Are you referring to one defendant or all  
13 defendants? Who were you referring to there?

14 A. I would presume all the defendants. But  
15 specifically the defendant, your -- your client, who was  
16 providing this for use as a room.

17 Q. Next sentence there, you say, "The flooring  
18 material in room number 504 was that of a smooth and  
19 lightly colored 12" X 12" tile."

20 A. Uh-huh.

21 Q. Where did you get those measurements?

22 A. If you look at the photograph we talked about  
23 earlier, you can see the lines in the tile. Looks like  
24 a vinyl tile. Vinyl tile has a 12-inch-by-12-inch,  
25 roughly, pattern. You can see that there is actually

1 some spaces between the tile. So it was kind of an  
2 estimate.

3 It also could have been a pattern in the  
4 floor, for example, say this was one big piece of vinyl  
5 and these lines are just the pattern that was printed on  
6 it so there's no gaps. But it's the same type of  
7 vinyl-type material, lightly colored. And so 12-inch by  
8 12-inch doesn't necessarily mean it's the size of the --  
9 of the material, but the size of the pattern on the  
10 material.

11 Q. May I see that picture? We've been talking  
12 about it, and we haven't referenced. It's in your file  
13 which we've marked as an exhibit. It's Deposition  
14 Exhibit 7 in Ms. Barnes that's in your file. That's the  
15 one --

16 A. Yes.

17 Q. -- we've been talking about.

18 A. Yes.

19 Q. Next in the background, last sentence, you  
20 say, "A vertical grab bar was not installed in  
21 bathtub/shower enclosure."

22 This is the first time I've seen that issue  
23 come up. How did this come about, this grab bar issue?

24 A. Well, it didn't just come about. It was an  
25 observation made which is relevant to this case. There

1 is no grab bar that I'm aware of that was actually  
2 mounted in the -- or on the support wall or anywhere  
3 near the bathtub, the critical support or the  
4 noncritical support wall, which would have been a  
5 vertical mounted grab bar, meaning --

6 Q. Up and down?

7 A. -- up and down. So if somebody is getting in  
8 and out of the tub, they can hang on to it.

9 Q. Did either Mr. or Ms. Barnes mention anything  
10 to you about the lack of a grab bar?

11 A. I don't think they mentioned a grab bar.

12 Q. Plaintiffs' attorney mention about the lack of  
13 a grab bar?

14 A. No.

15 Q. This is something you came up with on your own  
16 in looking at photographs or how?

17 A. Yes.

18 Q. Okay. Under your Opinions section there on  
19 Exhibit 10 and the Grab Bar heading, you state, quote,  
20 "It is my opinion that the Defendant should have  
21 provided at least one vertically mounted grab bar near  
22 the front critical support service wall of the  
23 bathtub/shower enclosure as to assist bathers as they  
24 enter and exit the tub-shower enclosure as required by  
25 the American Society of Testing and Materials (ASTM)

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1 F-446-99" -- quote -- "'Standard Consumer Safety  
2 Specification for Grab Bars and Accessories Installed in  
3 the Bathing Area.'" End quote.

4 Again, as we've talked, the ASTM is a  
5 completely voluntary standard, isn't it?

6 A. Yes.

7 Q. And it is not legally applicable to this condo  
8 in Sevier County Tennessee, is it?

9 MR. BERG: Object to form.

10 A. I don't know, but I don't think so.

11 Q. (BY MR. BALL) Okay. You're not aware of any  
12 Tennessee law, Sevier County building code, ordinance,  
13 or any other provision of Tennessee law or Sevier County  
14 local law that references this ASTM F-446-99 or adopts  
15 it in any way, are you?

16 MR. BERG: Objection; form.

17 A. The Americans With Disabilities Act, the ADA,  
18 is requiring grab bars. If I'm not mistaken, they  
19 reference this standard.

20 The reason I didn't include that in my report  
21 is Ms. Barnes, to my understanding, was not disabled. I  
22 think we talked about that earlier. And so I don't want  
23 to mislead the jury by saying, well, there was a  
24 violation of the ADA. Well, she wasn't disabled. But  
25 the ADA does apply to every county in the country. And

1 so the use of grab bars is -- is referenced by way of  
2 law in the ADA.

3 Q. (BY MR. BALL) But if Ms. -- if I understand  
4 you correctly, if Ms. Barnes is not disabled, then the  
5 ADA does not apply to her. Is that what you're saying?

6 A. That's what I'm saying.

7 Q. Okay.

8 A. But -- but your question was, are there laws  
9 that --

10 Q. Yes.

11 A. -- require grab bars? And the answer is yes.

12 Q. Do you know whether or not Ms. Barnes or  
13 Mr. Barnes, either one, requested any type of special  
14 room to accommodate a disability or anything like that?

15 A. I don't know.

16 Q. On page 2 there, the last paragraph before  
17 Bathmat, you state, "Based on the above-named nationally  
18 recognized industry consensus standard for  
19 bathtub/shower enclosure grab bar usage, it is clear  
20 that the bathtub/shower enclosure in question was not in  
21 compliance and therefore presented an unreasonably  
22 dangerous condition." End quote.

23 Is the nationally recognized industry  
24 consensus standard you're referring to ASTM F-446-99?

25 A. Yes.

1 myself are friends. We've known each other for over 25  
2 years. He and I personally worked and used his device  
3 many years ago. So I guess I was trained by him. He  
4 has since retired, and his device and company is owned  
5 by a new company, and they have a more advanced version  
6 of it, which I don't really work much with them.

7 Q. Do you know when the tribometer you used to  
8 test the towel in this case was last calibrated by the  
9 manufacturer?

10 A. There is a sticker on the side of it. I don't  
11 know the date. But it's been several years.

12 Q. Would you agree that within the industry there  
13 is some dissension as to whether there is any  
14 correlation with regard to tribometer readings to actual  
15 human slip accidents?

16 A. Well, it depends. There is 70 -- that I'm  
17 aware of, about 70 different ways to measure surface  
18 friction, which is what tribometers measure. Many of  
19 them are laboratory mounted. Some are portable. They  
20 use various sensors, different operating methodologies  
21 and procedures. So they're all different, and so  
22 obviously there is going to be different outputs from  
23 these various devices.

24 For the most part, most of them have no real  
25 test method to support their use. For example, you can

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1 go out and use a Brungraber test device on a floor and  
2 come up with a number. And when asked, well, what does  
3 the number mean, the answer is we don't know because  
4 there is no standard, no method, nothing. It's just --  
5 pardon the phrase -- a gadget.

6 The Brungraber, when used to measure floor mat  
7 backings, does have credibility because there is a  
8 published and reviewed -- revised and reviewed standard  
9 specifying how to use it and defining what output  
10 values, what they mean.

11 And so to answer your question, there is a lot  
12 of gadgets that people run around with using, most of  
13 which have little to any credibility. The few that do  
14 have credibility are codified by way of a national  
15 standard, ANSI or otherwise. And those are the ones  
16 that the NFSI and I rely upon, which is a very small  
17 number of devices.

18 Q. And you're not aware of any Tennessee law,  
19 Sevier County ordinance, building code, or other  
20 standard adopted by Sevier County that adopts or  
21 references either the NFSI standard or this value of 0.5  
22 as far as TCOF, are you?

23 A. No.

24 Q. Same question with regard to a methodology for  
25 quantifying slip resistance. Can you point me to any

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1 Tennessee law, Sevier County, Tennessee code, ordinance,  
2 or other standard that identifies a methodology for  
3 quantifying slip resistance?

4 A. Of?

5 Q. Something like a bath towel in this case.

6 A. No.

7 Q. All of the standards and methodology for  
8 testing coefficient of friction that you mentioned in  
9 your report are completely voluntary standards, aren't  
10 they?

11 A. They are voluntary, yes.

12 Q. And there are no codified laws or standards in  
13 Tennessee or Sevier County, Tennessee, that establish  
14 0.5 or any other value as the minimum required  
15 coefficient of friction or slip-resistance value, are  
16 there?

17 A. Of towels?

18 Q. Yes.

19 A. I don't know.

20 Q. If you'd look with me on page 3, it's the  
21 fourth paragraph down, starts with "Furthermore."

22 A. Yes.

23 Q. Look there, please. You say -- you cite  
24 ASTM 1637-09 and say -- it says that "Mats, runners, and  
25 area rugs shall be provided with safe transition from

1       A.    Yes.

2       Q.    On the other hand, say you put some adhesive  
3   on a piece of sandpaper and put that down on a bathroom  
4   floor, you put the same towel on top it, that's going to  
5   be a much more stable surface.   Correct?

6       A.    Well, you're more likely to have less  
7   slippage.

8       Q.    Right.

9       A.    I wouldn't say it's more stable.

10      Q.    The -- the bath mat has not changed in either  
11   of those two hypotheticals I presented you, correct?

12      A.    Yes.

13      Q.    But the floor surface has changed, correct?

14      A.    Yes.

15      Q.    And that's going to have some impact on how  
16   slip resistant that bath mat is, correct?

17      A.    Yes.

18      Q.    Because it's the interaction between that  
19   surface and that mat.

20           So this standard that was created for creating  
21   a standard manufacturing type of value for bath mats,  
22   it's not necessarily suited for a forensic application,  
23   correct?

24      A.    Why not?

25      Q.    Because it ignores one of those variables,

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1 floor coverings.

2 Q. So who created the NFSI 101-C along with  
3 yourself?

4 A. We had, I think, a sub -- well, there was a  
5 subcommittee of three -- two or three people. I  
6 don't --

7 Q. A subcommittee of what?

8 A. That wrote the standard.

9 Q. But -- but what organization?

10 A. NFSI.

11 Q. Of NFSI?

12 A. Yeah. There was no ANSI committee at the time  
13 NFSI 101-C was first developed.

14 Q. Was NFSI 101-C ever subject to peer review?

15 A. Well, standards are not -- in this -- in this  
16 context are not peer reviewable. They're -- the NFSI  
17 standard specifically is a bit different than, say, an  
18 ANSI or ASTM standard. Those are created by committees.  
19 They're consensus body committees.

20 NFSI is more like UL, Underwriter  
21 Laboratories. UL creates UL standards for themselves,  
22 and industry there -- follows them and submits to them  
23 or not. It's voluntary. NFSI develops their standards  
24 much like the UL. They're private standards. They're  
25 voluntary. And industry can either adopt them or not.

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1       Q.    Okay.  So these standards were never sent to  
2 any other engineers during their creation for any sort  
3 of review and feedback analysis-type process?

4       A.    I don't know what you mean by "other  
5 engineers."  What other -- it was a standard that was  
6 created by and for the NFSI, approved and codified by  
7 the NFSI board of directors, published as an NFSI  
8 standard, as a voluntary standard.

9               It has since gained a lot of popularity and  
10 recognition by industry -- we talked about that  
11 earlier -- who relies upon it and actually has their  
12 products, their floor mats, tested to the standard.

13       Q.    Are you aware of anyone other than yourself  
14 that uses the standard for forensic application?

15       A.    I'm sure quite a few people do.  It's a -- it  
16 is -- you mean NFSI 101-C?

17       Q.    Yes.

18       A.    It is the only recognized standard for  
19 measuring slip resistance of backings that I'm aware of  
20 in the world.  And so anyone that's doing work in this  
21 field purchases the standard.  We sell many of the  
22 copy -- the standard's being sold, so I assume people  
23 are using it, and it's being sold to a wide range of  
24 engineers and attorneys and presumably engineers that  
25 are acting as forensic engineers in matters like this.

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1 vast majority of floor mat manufacturers use it. I can  
2 only assume that of the hundreds of thousands of  
3 applications, when you add it all up, that this floor  
4 mat standard is widely used in the forensic expert  
5 profession. But I don't know these people, because how  
6 would I?

7 Q. So it's only an assumption?

8 A. Well, how would I know if your client is, say,  
9 getting sued by somebody and there is a forensic expert  
10 retained that's using the standard? How would I know  
11 that? How would I know all these people? That's what  
12 I'm saying. You're kind of setting me up with a false  
13 pretense. How would I know every single slip-and-fall  
14 lawsuit that was taking place or a forensic engineer  
15 that's involved in a lawsuit? I don't know. That's  
16 beyond my -- my knowledge.

17 Q. Did you consult with the manufacturer of the  
18 tribometer in drafting NFSI 101-C?

19 A. No.

20 Q. Do you know whether taping a sample on the  
21 tribometer deviates from the tribometer instructions?

22 A. Well, the tribometer -- I don't know what  
23 their current instructions say, but the tribometer  
24 itself is defined as a floor tester. That's what they  
25 sell it as today. We're not using it as a floor tester.

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1 Using it as a floor mat backing sensor device. And so  
2 the instructions as a floor tester I would presume would  
3 be different than a floor mat backing --

4 Q. Okay. Just so -- just so it's clear on the  
5 record, NFSI 101-C states that you take -- for  
6 example -- do you mind if I pick this up?

7 A. Uh-huh.

8 Q. So you take this particular --

9 A. Material.

10 Q. -- piece of material and you apply an adhesive  
11 to it.

12 A. No. Tape.

13 Q. Tape?

14 A. There is actually tape on the foot, and you  
15 just take that and -- it's a double-sided tape. You  
16 just adhere it to the tape. And then you peel it off  
17 when you're done.

18 Q. Okay. And -- and it sticks on that foot and  
19 you --

20 A. Yes.

21 Q. Okay. Yeah. And --

22 A. That's it. It's a pretty simple concept, and  
23 it's really very appropriate because it does simulate,  
24 you know, even though it's backwards. It's -- instead  
25 of a foot coming down on the mat, it's -- or in this

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1 application as described in NFSI Standard 101-C?

2 A. Well, again, you're confusing two things.

3 We're not using the tribometer according to the  
4 manufacturer's -- the new manufacturer's instructions.

5 The previous manufacturer, Dr. Brungraber, who owned a  
6 company called Slip-Test, that's the earlier -- are you  
7 talking about the current instructions? Which  
8 instructions are you talking about?

9 Q. Well, let's talk about both. Take the old  
10 instructions first.

11 A. Right. Very -- the old instructions were  
12 really designed, I guess, as they are now for -- as a  
13 floor tester. So we're not using the device as a floor  
14 tester. So to us, the instructions are irrelevant.  
15 We're not using it that way.

16 Q. So the -- any error rate would be inapplicable  
17 because of the deviation from the instructions? And I'm  
18 talking about the old set of instructions.

19 A. Well, since I'm not familiar with the new set  
20 of instructions that have been used for the Brungraber  
21 Mark III, because I think they don't even make the  
22 Mark II anymore. I think the instructions are  
23 completely different. We -- we don't employ the device  
24 the way the instructions detail because it's -- they're  
25 being used to measure floors.

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1 know -- maybe you're just asking the wrong --

2 Q. A known --

3 A. -- the question the wrong way.

4 Known error? What is the known error of the  
5 Brungraber device?

6 Q. Yes.

7 A. Is that what you're asking me?

8 Q. Yes.

9 A. As I mentioned earlier, I think the degree of  
10 accuracy is plus or minus roughly 5 percent. Might be  
11 less than that. In the con -- way we're using it --

12 Q. Well --

13 A. -- that's our method.

14 Q. Well, that error rate is based on its use as a  
15 floor tester is the way you described it, correct?

16 A. We're not using it that way.

17 Q. Right.

18 A. The 5 percent error rate is the way we're  
19 using it.

20 Q. How do you know what the error rate is?

21 A. Because we measured it. We -- I think the  
22 question came up earlier about when is the last time  
23 this device was calibrated.

24 Q. Uh-huh.

25 A. Okay. Well, the manufacturer of this

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1 particular device is long gone. He's out of business.  
2 The new manufacturer, I guess, could calibrate it. But  
3 they're calibrating it for a different purpose.

4 So what we do is we -- we own this device. We  
5 use this device. We control it. It's in our  
6 laboratory. And so the rate of error is quantified as  
7 approximately plus or minus 5 percent. That's the error  
8 rate as we use the device. So -- is that what you're  
9 asking me?

10 Q. And so you came up with that error rate?

11 A. We calculated it.

12 Q. Okay. And is that published anywhere in that  
13 standard?

14 A. No.

15 Q. Okay. Where is the -- is there any  
16 documentation of the testing to come up with that error  
17 rate?

18 A. Well, it's an approximate value. And that's  
19 based on the fact -- well, you brought it up. It's  
20 based on the fact that there are some factors that are  
21 not exactly perfect.

22 For example, the tile is not a perfect tile.  
23 There may be variations within the tile's coefficient of  
24 friction. The device is mechanical. There is a certain  
25 amount of movement. You mentioned that there is a tape

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1 that's used to hold the sample down. When you add up  
2 all those variables of movement or what could affect the  
3 results, it's about a 5 percent deviation.

4 Now, 5 percent, you know, is a reasonable  
5 deviation for a tribometer. Most tribometers have  
6 deviations greater than 5 percent, many of them, not  
7 all, but many of them do.

8 Q. Getting back to my question, is there any  
9 documentation that shows how that error rate was  
10 calculated?

11 A. Maybe. I don't know if there was or not.

12 Q. Were you the one who calculated it?

13 A. No, I didn't.

14 Q. Who did?

15 A. I'm not certain who on the subcommittee was in  
16 charge of that --

17 Q. Okay.

18 A. -- when this was being developed.

19 Q. Was there anyone with an engineering  
20 background on that subcommittee?

21 A. Probably. We had a lot of folks who -- well,  
22 we still have a lot of engineers that are on the  
23 committee today that go back to the days of NFSI. So --

24 Q. But you said it was a three-person  
25 subcommittee?

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1       Q.     No. I'm referring to the auditor of the test.  
2 There is a tech -- under NF -- I'm sorry -- NFSI 101-C,  
3 there is a technician and then there is an auditor,  
4 correct?

5       A.     You're kind of mixing a couple of things up.  
6                 The technician can be the auditor. They're  
7 the same person. Same pers -- it's the same person  
8 under two different names or titles.

9       Q.     In the report you said the subject bath towel  
10 was not affixed to the floor.

11                 Are you suggesting that a fixation of a bath  
12 mat is necessary to comply with the standard of care?

13       A.     Well, as a bath mat, no. If you're using a  
14 bath mat whose backing is within the compliance or the  
15 standard of care, being slip resistant, then you would  
16 not need to affix the mat to the floor. But that's not  
17 what happened in this case.

18       Q.     You mentioned that one time you stayed at a  
19 Trump property as the example of when you have seen a  
20 rubber-backed bath mat.

21                 Was that particular mat placed in front of the  
22 sink? In front of the bathtub? In front of the shower?

23       A.     Well, it was provided in the bathroom, and the  
24 guest could put it wherever they want.

25       Q.     Okay. So it wasn't already laid on the ground

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1 all I'm saying.

2 You know, I was asked for one. Now you want  
3 two. Right? Is that what you want? Two? Three? I'm  
4 telling you most hotels don't use them at all. And if  
5 you're going to use them, you know, fine. But  
6 understand there is inherent risk.

7 And I want to be clear. Hotels use these a  
8 lot and are wrong. It's a big mistake. And that's why  
9 I've been retained in -- I don't know -- six, seven,  
10 eight lawsuits just like this. Same stupid stuff.  
11 Using a towel as a bath mat and people get hurt.

12 You can go to the Grapevine, whatever that  
13 hotel is there, because -- in fact, that's a case I  
14 remember now that had the same problem. I think they  
15 had two people slip and fall on bath towels at the  
16 Gaylord Texan. Same thing. Maybe that's a Marriott  
17 property.

18 So doesn't make it right. Doesn't make it  
19 right.

20 Q. Okay. Back to your first report. And I'm  
21 sorry. I don't know what exhibit that was.

22 A. 1. 1.

23 Q. Exhibit 1. Okay. At the time of that report,  
24 you did not have an exemplar in your possession,  
25 correct?

1 A. That's correct.

2 Q. Okay. You make a statement in that report  
3 about the thickness of the towel.

4 A. Uh-huh.

5 Q. What do you base your assessment of the  
6 thickness of the towel on?

7 A. Well, it was described to me. And by the way,  
8 what I actually received is exactly what I assumed it  
9 was. A terry cloth towel.

10 Q. Okay.

11 A. And so a terry cloth towel has a certain level  
12 of cushion or thickness which it's designed to have to  
13 absorb water. That's what towels are for, for absorbing  
14 water. And so what I actually received was, although a  
15 little bit different color -- I thought it would be  
16 white. It's actually kind of a beige color. But it's  
17 the same -- same type of terry material that I -- you  
18 know, that we've all seen in hotels and bathrooms  
19 everywhere in the country.

20 Q. So it was an assumption? The thickness of it  
21 was just an assumption that you made?

22 A. Yeah, an assumption that was later verified  
23 once I received the sample of the towel.

24 Q. Now, looking at the ASTM standard that you  
25 cited to, the 1637 standard --

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1 number -- this is the A1264.2 standard.

2 A. Uh-huh. Yes.

3 Q. In paragraph 2.3, it says, "This standard is  
4 intended to apply primarily to the protection of  
5 employees in workplace situations. It does not apply to  
6 construction, residential occupancies, floating roof  
7 tanks or marine dock facilities."

8 Would you agree, then, that the situation that  
9 we're talking about in this case is outside the scope of  
10 this standard?

11 A. No.

12 Q. On what basis would you -- would you say that  
13 the standard applies even though it specifically says  
14 that it does not apply?

15 A. It doesn't specifically say it doesn't apply.  
16 It says "primarily." Right?

17 Q. Okay.

18 A. "Primarily" doesn't mean specifically, number  
19 one.

20 Number two, this particular location, being a  
21 bathroom of a hotel, for all practical purposes, would  
22 be used by employees. Right. Somebody -- some  
23 housekeeper, a worker is going to be coming into this  
24 bathroom. Right. It's a work area for them. They're  
25 cleaning it.

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1 I further certify that I am neither counsel for,  
2 related to, nor employed by any of the parties or  
3 attorneys in the action in which this proceeding was  
4 taken, and further that I am not financially or  
5 otherwise interested in the outcome of the action.

6 Certified to by me this 5th day of June, 2017.

Angela L. Marcus

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